

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 JANET GAARD
Acting Chief Assistant Attorney General
3 THEODORA BERGER
Senior Assistant Attorney General
4 EDWARD G. WEIL (SBN 88302)
Supervising Deputy Attorney General
5 TIMOTHY E. SULLIVAN (SBN 197054)
HARRISON M. POLLAK (SBN 200879)
6 Deputy Attorneys General
1515 Clay Street, 20th Floor
7 P.O. Box 70550
Oakland, CA 94612-0550
8
9

10 ROCKARD J. DELGADILLO (SBN 125465)
Los Angeles City Attorney
11 JEFFREY B. ISAACS (SBN 117104)
Chief Assistant City Attorney and Chief,
12 Criminal and Special Litigation Branch
PATTY BILGIN (SBN 164090)
13 Assistant City Attorney
Environmental Justice and Protection Section
14 ELISE A. RUDEN (SBN 124970)
JAIME SUAREZ (SBN 201896)
15 Deputy City Attorneys
200 North Main Street, 500 City Hall East
16 Los Angeles, California 90012-4131
17

18 Attorneys for Plaintiffs People of the State of California

19 SUPERIOR COURT OF CALIFORNIA
20 COUNTY OF ALAMEDA

21 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
22 **rel. EDMUND G. BROWN JR., Attorney General,**
23 **Plaintiffs,**
24 **v.**
25 **MATTEL, INC.; FISHER-PRICE, INC.;**
26 **MICHAELS STORES, INC.; TOYS ‘R’ US,**
27 **DELAWARE INC.; TOYS ‘R’ US, INC.; TOYS ‘R’**
28 **US; WAL-MART STORES, INC.; TARGET**
CORPORATION; SEARS HOLDINGS
CORPORATION; SEARS, ROEBUCK & CO.; KB
TOYS, INC.; KB TOYS RETAIL, INC.; COSTCO
WHOLESALE CORPORATION; A&A GLOBAL

**COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF**

1 **INDUSTRIES, INC.; RC2 CORPORATION;**
2 **EVEREADY BATTERY COMPANY, INC.; KIDS**
3 **II, INC.; KMART CORPORATION; MARVEL**
4 **ENTERTAINMENT, INC.; TOY INVESTMENTS,**
5 **INC.; and Defendants DOES 1 through 100,**
6 **inclusive,**

Defendants.

7 Plaintiffs, the People of the State of California, by and through Edmund G. Brown Jr.,
8 Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney, hereby allege:

9 **I. PRELIMINARY STATEMENT**

10 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure to
11 lead and lead compounds, which are chemicals known to the State of California to cause birth
12 defects, or other reproductive harm, or cancer. Under the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as “Proposition
14 65,” businesses must provide persons with a “clear and reasonable warning” before exposing
15 individuals to chemicals known to the state to cause cancer or reproductive harm. In this case,
16 exposures to lead or lead compounds occur when individuals handle toys made of materials that
17 contain lead or lead compounds. This complaint furthermore seeks to remedy defendants’
18 failure to comply with federal law governing the lead content of paint and surface coatings on
19 toys.

20 **II. PARTIES**

21 2. Plaintiffs are the People of the State of California, by and through Edmund G. Brown Jr.,
22 Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney. Health and Safety
23 Code section 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be
24 brought by the Attorney General in the name of the People of the State of California or by a city
25 attorney of a city having a population in excess of 750,000. Business and Professions Code
26 section 17204 provides that actions to enforce that statute may be brought by the Attorney
27 General or by a city attorney of a city having a population in excess of 750,000. The City of Los
28 Angeles has a population greater than 750,000.

1 3. Defendant MATTEL, INC. is a business entity with ten or more employees that has
2 manufactured, distributed, or sold toys made with components that contain lead or lead
3 compounds.

4 4. Defendant FISHER-PRICE, INC. is a business entity with ten or more employees that
5 has manufactured, distributed, or sold toys made with components that contain lead or lead
6 compounds.

7 5. Defendant MICHAELS STORES, INC. is a business entity with ten or more employees
8 that has manufactured, distributed, or sold toys made with components that contain lead or lead
9 compounds.

10 6. Defendant TOYS 'R' US, DELAWARE INC. is a business entity with ten or more
11 employees that has manufactured, distributed, or sold toys made with components that contain
12 lead or lead compounds.

13 7. Defendant TOYS 'R' US, INC. is a business entity with ten or more employees that has
14 manufactured, distributed, or sold toys made with components that contain lead or lead
15 compounds.

16 8. Defendant TOYS 'R' US is a business entity with ten or more employees that has
17 manufactured, distributed, or sold toys made with components that contain lead or lead
18 compounds.

19 9. Defendant WAL-MART STORES, INC. is a business entity with ten or more employees
20 that has manufactured, distributed, or sold toys made with components that contain lead or lead
21 compounds.

22 10. Defendant TARGET CORPORATION is a business entity with ten or more employees
23 that has manufactured, distributed, or sold toys made with components that contain lead or lead
24 compounds.

25 11. Defendant SEARS HOLDINGS CORPORATION is a business entity with ten or more
26 employees that has manufactured, distributed, or sold toys made with components that contain
27 lead or lead compounds.

28 12. Defendant SEARS, ROEBUCK & CO. is a business entity with ten or more employees

1 that has manufactured, distributed, or sold toys made with components that contain lead or lead
2 compounds.

3 13. Defendant KB TOYS, INC. is a business entity with ten or more employees that has
4 manufactured, distributed, or sold toys made with components that contain lead or lead
5 compounds.

6 14. Defendant KB TOYS RETAIL, INC. is a business entity with ten or more employees
7 that has manufactured, distributed, or sold toys made with components that contain lead or lead
8 compounds.

9 15. Defendant COSTCO WHOLESALE CORPORATION is a business entity with ten or
10 more employees that has manufactured, distributed, or sold toys made with components that
11 contain lead or lead compounds.

12 16. Defendant A&A GLOBAL INDUSTRIES, INC. is a business entity with ten or more
13 employees that has manufactured, distributed, or sold toys made with components that contain
14 lead or lead compounds.

15 17. Defendant RC2 CORPORATION is a business entity with ten or more employees that
16 has manufactured, distributed, or sold toys made with components that contain lead or lead
17 compounds.

18 18. Defendant EVEREADY BATTERY COMPANY, INC. is a business entity with ten or
19 more employees that has manufactured, distributed, or sold toys made with components that
20 contain lead or lead compounds.

21 19. Defendant KIDS II, INC. is a business entity with ten or more employees that has
22 manufactured, distributed, or sold toys made with components that contain lead or lead
23 compounds.

24 20. Defendant KMART CORPORATION is a business entity with ten or more employees
25 that has manufactured, distributed, or sold toys made with components that contain lead or lead
26 compounds.

27 21. Defendant MARVEL ENTERTAINMENT, INC. is a business entity with ten or more
28 employees that has manufactured, distributed, or sold toys made with components that contain

1 lead or lead compounds.

2 22. Defendant TOY INVESTMENTS, INC. is a business entity that has manufactured,
3 distributed, or sold toys made with components that contain lead or lead compounds. The
4 following allegation is likely to have evidentiary support after a reasonable opportunity for
5 further investigation or discovery: TOY INVESTMENTS, INC. has ten or more employees.

6 23. The true names and capacities of the defendants sued herein as Does 1 through 100 are
7 unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiffs will amend
8 this complaint to allege the true names and capacities of these defendants when they have been
9 determined. Each of the fictitiously named defendants is responsible in some manner for the
10 conduct alleged herein.

11 24. Whenever reference is made in this complaint to “defendants,” then unless otherwise
12 specified, such reference includes the defendants named in paragraphs 3 to 22, and Does 1
13 through 100.

14 **III. JURISDICTION AND VENUE**

15 25. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
16 because this case is a cause not given by statute to other trial courts.

17 26. This Court has jurisdiction over each defendant named above, because each is a
18 business entity that does sufficient business, has sufficient minimum contacts in California, or
19 otherwise intentionally avails itself of the California market, through the sale, marketing, and use
20 of its products in California, to render the exercise of jurisdiction over it by the California courts
21 consistent with traditional notions of fair play and substantial justice.

22 27. Venue is proper in this Court because the cause, or some part of the cause, arises in
23 Alameda County in that defendants’ products are sold in this county.

24 **IV. STATUTORY BACKGROUND**

25 **A. Proposition 65**

26 28. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
27 passed as “Proposition 65” by a vote of the people in November of 1986.

28 29. The warning requirement of Proposition 65 is contained in Health and Safety Code

1 section 25249.6, which provides:

2 No person in the course of doing business shall knowingly and intentionally expose
3 any individual to a chemical known to the state to cause cancer or reproductive
4 toxicity without first giving clear and reasonable warning to such individual, except as
5 provided in Section 25249.10.

6 30. An exposure to a chemical in a consumer product is one “which results from a person’s
7 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer
8 good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22,
9 § 12601, subd. (b).)

10 31. Proposition 65 establishes a procedure by which the state is to develop a list of
11 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code,
12 § 25249.8.) No warning need be given concerning a listed chemical until one year after the
13 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

14 32. Any person “violating or threatening to violate” the statute may be enjoined in any
15 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is
16 defined to mean “to create a condition in which there is a substantial probability that a violation
17 will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up
18 to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

19 33. Actions to enforce the law “may be brought by the Attorney General in the name of the
20 People of the State of California, by any district attorney, [or] by any city attorney of a city
21 having a population in excess of 750,000.” (*Id.*, § 25249.7, subd. (c).) Private parties are given
22 authority to enforce Proposition 65 “in the public interest,” but only if the private party first
23 provides written notice of a violation to the alleged violator, the Attorney General, and every
24 District Attorney in whose jurisdiction the alleged violation occurs. If no public prosecutors
25 commence enforcement within sixty days, then the private party may sue. (Health & Saf. Code,
26 § 25249.7(d).)

27 34. In an action by the Attorney General or a city attorney, the Attorney General or city
28 attorney may “seek and recover costs and attorney’s fees on behalf of any party who provides a
notice pursuant to subdivision (d) and who renders assistance in that action.” (*Id.*, § 25249.7,

1 subd. (j).)

2 **B. The Federal Consumer Product Safety Act**

3 35. The federal Consumer Product Safety Act (“CPSA”) (15 U.S.C. §§ 2051-2084) was
4 signed into law by the President in 1972. The CPSA created the Consumer Product Safety
5 Commission and authorized the Commission to promulgate rules declaring a consumer product
6 to be a “banned hazardous product” if the product presents an unreasonable risk of injury that is
7 not otherwise addressed by the CPSA. (CPSA, § 8, 15 U.S.C. § 2057.)

8 36. Pursuant to that authority, the Consumer Product Safety Commission ruled that paint
9 and similar surface-coating materials that contain lead or lead compounds and in which the lead
10 content is in excess of 0.06 percent (referred to as “lead-containing paint”) are banned hazardous
11 products under CPSA sections 8 and 9 (15 U.S.C. §§ 2057, 2058). (16 C.F.R. 1303.1(a).)

12 37. The Consumer Product Safety Commission further ruled that toys and other articles
13 intended for use by children that bear “lead-containing paint” are “banned hazardous products.”
14 (16 C.F.R. 1303.4; 16 C.F.R. 1303.1(a)(1).) The Commission stated that it issued the ban
15 because “there is an unreasonable risk of lead poisoning in children associated with lead content
16 of over 0.06 percent in paints and coatings to which children have access.”
17 (16 C.F.R. 1303.1(c).)

18 38. Under the CPSA, it is “unlawful for any person to . . . manufacture for sale, offer for
19 sale, distribute in commerce, or import into the United States any consumer product which has
20 been declared a banned hazardous product by a rule under this Act.” (CPSA, § 19, 15 U.S.C.
21 § 2068(a)(2).)

22 **C. The Unfair Competition Act**

23 39. California Business and Professions Code section 17200 provides that “unfair
24 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section
25 17203 of the Business and Professions Code provides that “(a)ny person performing or
26 proposing to perform an act of unfair competition within this state may be enjoined in any court
27 of competent jurisdiction.”

28 40. Unlawful acts under the statute include any act that is unlawful that is conducted as part

1 of business activity, and therefore include violations of Proposition 65 and the CPSA.

2 41. Business and Professions Code section 17206, subdivision (a), provides that any person
3 violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five
4 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil
5 action brought in the name of the people of the State of California by the Attorney General, [or]
6 by any city attorney of a city, or city and county, having a population in excess of 750,000, with
7 the consent of the district attorney, by a city prosecutor in any city having a full-time city
8 prosecutor by any district attorney.” Under section 17205, these penalties are “cumulative to
9 each other and to the remedies or penalties available under all other laws of this state.”

10 **V. FACTS**

11 42. “Lead” was placed in the Governor's list of chemicals known to the State of California
12 to cause reproductive toxicity on February 27, 1987. It is specifically identified under three
13 subcategories: “developmental reproductive toxicity,” which means harm to the developing
14 fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and
15 “male reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code
16 Regs., tit. 22, § 12000, subd. (c).)

17 43. “Lead and lead compounds” was placed in the Governor's list of chemicals known to
18 the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000,
19 subd. (b).)

20 44. The following allegations are likely to have evidentiary support after a reasonable
21 opportunity for further investigation or discovery: Each defendant has manufactured,
22 distributed, or sold toys made with components that contain lead or lead compounds for sale or
23 use within the State of California.

24 45. Individuals who handle or use the toys are exposed to lead or lead compounds through
25 contact between the toys and skin or by placing the toys or parts of the toys in their mouths.
26 Persons that handle or use the toys can and do ingest some portion of that lead or lead
27 compounds, either through placing the toys or parts of the toys into the mouth, through transfer
28 of lead or lead compounds from the skin to the mouth, through transfer of lead or lead

1 compounds from the skin to objects that are put in the mouth, such as food, or through
2 absorption of lead or lead compounds through the skin. Both adults and children handle or use
3 the toys and are exposed to the lead or lead compounds that are released from them in the course
4 of their intended and reasonably foreseeable use.

5 46. Each defendant has received one or more notices of violation from private
6 organizations stating that the defendant has violated Proposition 65 by exposing individuals to
7 toys with lead or lead compounds without providing a clear and reasonable warning.

8 47. Each defendant has had knowledge that some of the toys it manufactured, distributed,
9 or sold contain lead or lead compounds.

10 48. Each defendant has intended that individuals use and handle the toys. Each defendant
11 has had knowledge that individuals, including both adults and children, use and handle the toys it
12 manufactured, distributed, or sold that are made with materials that contain lead or lead
13 compounds.

14 49. The following allegations are likely to have evidentiary support after a reasonable
15 opportunity for further investigation or discovery: Each defendant has knowingly and
16 intentionally exposed individuals to lead or lead compounds. The exposure is knowing and
17 intentional because it is the result of the defendants' deliberate act of manufacturing,
18 distributing, or selling toys made with materials that contain lead or lead compounds, with the
19 knowledge that its intended use will result in exposure to lead or lead compounds.

20 50. The following allegations are likely to have evidentiary support after a reasonable
21 opportunity for further investigation or discovery: Each defendant has failed to provide clear
22 and reasonable warnings that the use of the products in question results in exposure to a chemical
23 known to the State of California to cause cancer, birth defects and other reproductive harm, and
24 no such warning was provided to those individuals by any other person.

25 51. Each defendant listed in paragraphs 3 through 10 and 13 through 21 has manufactured
26 for sale, offered for sale, distributed in commerce, or imported into the United States a toy that
27 bears a paint or surface coating containing greater than 0.06 percent lead in violation of the
28 CPSA. The following allegations are likely to have evidentiary support after a reasonable

1 opportunity for further investigation or discovery: Each of the defendants listed in paragraphs 11
2 and 12 has manufactured for sale, offered for sale, distributed in commerce, or imported into the
3 United States a toy that bears a paint or surface coating containing greater than 0.06 percent lead
4 in violation of the CPSA.

5 **VI. FIRST CAUSE OF ACTION**

6 (Against Each Defendant for Violation of Proposition 65)

7 52. Paragraphs 1 through 51 are realleged as if fully set forth herein.

8 53. By committing the acts alleged above, each defendant has, within the previous twelve
9 months, in the course of doing business, knowingly and intentionally exposed individuals to
10 chemicals known to the State of California to cause cancer and reproductive toxicity without first
11 giving clear and reasonable warning to such individuals, within the meaning of Health and
12 Safety Code section 25249.6.

13 54. Said violations render each defendant liable to plaintiffs for civil penalties not to
14 exceed \$2,500 per day for each violation, as well as other remedies.

15 **VII. SECOND CAUSE OF ACTION**

16 (Against Each Defendant for Unlawful Business Practices)

17 55. Paragraphs 1 through 54 are realleged as if fully set forth herein.

18 56. By committing the acts alleged above, each defendant has, within the previous four
19 years, engaged in unlawful business practices which constitute unfair competition within the
20 meaning of Business and Professions Code section 17200.

21 57. Said violations render each defendant liable to plaintiffs for civil penalties not to
22 exceed \$2,500 for each violation, as well as other remedies.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiffs pray that the Court:

25 1. Pursuant to the First and Second Causes of Action, grant civil penalties according
26 to proof;

27 2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions
28 Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent

1 injunctions, or other orders prohibiting defendants from exposing persons within the State of
2 California to Listed Chemicals caused by the use of their products without providing clear and
3 reasonable warnings, as plaintiffs shall specify in further application to the Court;

4 3. Enter such orders as “may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by means of” these unlawful
6 acts, as provided in Business and Professions Code section 17203 and other applicable laws;

7 4. Award plaintiffs their costs of suit;

8 5. Grant such other and further relief as the Court deems just and proper.

9 Dated: _____

Respectfully submitted,

10 EDMUND G. BROWN JR.
11 Attorney General of the State of California
12 JANET GAARD
13 Acting Chief Assistant Attorney General
14 THEODORA BERGER
15 Senior Assistant Attorney General
16 EDWARD G. WEIL
17 Supervising Deputy Attorney General
18 TIMOTHY E. SULLIVAN
19 Deputy Attorney General

HARRISON M. POLLAK
Deputy Attorney General
Attorneys for Plaintiffs People of the State of
California

20 Dated: _____

21 ROCKARD J. DELGADILLO
22 Los Angeles City Attorney
23 JEFFREY B. ISSACS
24 Chief Assistant City Attorney and Chief,
25 Criminal and Special Litigation Branch
26 PATTY BILGIN
27 Assistant City Attorney
28 ELISE A. RUDEN
JAIME SUAREZ
Deputy City Attorneys

ROCKARD J. DELGADILLO
Attorneys for Plaintiffs Los Angeles City
Attorney and People of the State of California